IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.856 OF 2007

Shri Rufus D'souza & Anr. ...Appellants

Versus

Hanuman @ Hanumant Vishnu Bhandari & Anr. ...Respondents

Shri A.G.Damle for Shri Ketan A. Chotani for the Appellants.

CORAM : ABHAY S.OKA, J.
DATED : OCTOBER 31st, 2007.

P.C.:

1. Admit. Advocate for the respondent No.1 waives service. The learned counsel for the appellant states that he may be permitted to delete the second respondent. Permission is granted. Amendment to be carried out within four weeks.

2. By order impugned dated 04th October, 2007, on a Notice of Motion filed by the appellants-plaintiffs the learned trial Judge declined to grant ad-interim relief in favour of the plaintiffs/appellants.

3. The appellants-plaintiffs filed a suit for declaration that the respondents are not entitled to prevent the appellants' right of way to approach their properties being CTS Nos.2059 and 2060 situated at

Chikoowadi, village Malvani, Taluka Borivali from the portion marked in the red colour on the plan marked as Exhibit B2 having width of 16 feet.

4. The trial Court has declined to grant ad-interim injunction. While declining to grant injunction, in paragraph No.3 the trial Court has observed thus:

> "3. Learned advocate appearing on behalf of the defendants submitted that there was no 16 feet width road. It was only a footpath for passing from the property of defendants and even till today the defendants have no objection if the plaintiffs could pass through the said footpath but they cannot take vehicles and use 16 feet width land for ingress and egress to their properties".

5. The learned counsel appearing for the first respondent has reiterated aforesaid statement made by the first respondent before the trial Court.

6. The Notice of Motion is pending. In view of the aforesaid statement which is made by the advocate for the first respondent, till the disposal of the notice of motion the plaintiffs will be sufficiently protected if

the first respondent is restrained by order of injunction from carrying on any construction on the disputed road described on plan annexed as Exhibit 'C' to the plaint.

7. Hence, the appeal is disposed of by passing following order:

(i) The statement made by the first defendant which is reiterated by the advocate for the first respondent is accepted.

(ii) The trial Court will dispose of Notice of Motion No.63 of 2007 as expeditiously as possible and in any event before the end of the year 2007. Till the disposal of the Notice of Motion, the first respondent is restrained from carrying on any construction on the road more particularly shown on map annexed to the plaint and marked as Exhibit 'C'.

(iii) It is made clear that all contentions of the parties in pending Notice of Motion are expressly kept open.

(iv) It is obvious that the trial Court will decide

the Notice of Motion on its own merits without being influenced by the tentative observations made in the impugned order.

(v) Appeal is disposed of in above terms.

(vi) Parties and the concerned court to act upon an authenticated copy of this order.

JUDGE